

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

COMMENTARY ON SECTIONS

Section 1 – Restriction on automatic early release

3. Section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) provides that a long-term prisoner is someone who is serving a sentence of four years or more.
4. Section 27(5) of the 1993 Act provides for the ‘single-termining’ of more than one sentence. This can happen where a person has been sentenced to more than one sentence either at the same time or at a different time where the person receiving the second or subsequent sentence has not been released from the first sentence. For example, a person receiving a three-year sentence for an offence and a two-year sentence for a separate offence at the same time where the court orders that the two-year sentence should run consecutive to the three-year sentence will have received what becomes a single-termined sentence of five years. A person receiving a single-termined sentence of four years or more will be classed as a long-term prisoner under the 1993 Act even though each individual sentence may be less than four years.
5. Section 1(2) of the 1993 Act provides for the release arrangements for all long-term prisoners with the exception of children. Release arrangements for children are provided for in section 7 of the 1993 Act and are not affected by the 2015 Act. A long-term prisoner is, by virtue of section 1(2), to be released as soon as the person has served two-thirds of their sentence. This applies if the prisoner has not by that point been released through other release arrangements of the 1993 Act e.g. discretionary early release through the operation of the Parole Board. This system is known as automatic early release.
6. Section 1(2) of the 2015 Act inserts new sections 1(1A), 1(1B) and 1(2A) into the 1993 Act.
7. Section 1(2)(a) of the 2015 Act inserts new section 1(1A) into the 1993 Act. This sets out which long-term prisoners will remain subject to existing section 1(2) of the 1993 Act, and which long-term prisoners will be subject instead to new section 1(2A) of the 1993 Act.

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8. Paragraph (a) of new section 1(1A) of the 1993 Act provides for the existing automatic early release provisions in section 1(2) of the 1993 Act to continue to apply to those long-term prisoners who are serving sentences imposed before the day that section 1 of the 2015 Act comes into force.
9. Paragraph (b) provides for the new arrangements set out in section 1(2A) to apply to long-term prisoners (other than those subject to extended sentences) whose sentences are imposed on or after the day that section 1 of the 2015 Act comes into force. The date that a prisoner's sentence is imposed will therefore determine what entitlement that prisoner has to automatic early release.
10. Where the sentence is a single-termed one, the date of imposition of the sentence will be the date that the first sentence was imposed. Where the sentence is one that is imposed on appeal, new section (1B) of the 1993 Act provides for the date of imposition of the original sentence to be treated as the relevant date.
11. New section 1(2A) of the 1993 Act, as inserted by section 1(2)(b) of the 2015 Act, provides that those prisoners to whom it applies must be released on licence six months before their sentence end date (unless they have previously been released on licence in relation to that sentence).
12. The overall effect of the provisions inserted into the 1993 Act by section 1(2) of the 2015 Act, operating alongside existing provision in the 1993 Act, is that any long-term prisoner whose sentence was imposed before the day that section 1 of the 2015 Act comes into force will continue to be treated under the existing automatic early release rules within the 1993 Act. For those long-term prisoners sentenced on or after the day of commencement of section 1 of the 2015 Act, different rules will apply depending upon whether or not they have an extended sentence. For those with an extended sentence, no automatic early release will take place at any point in their sentence. For those without an extended sentence, automatic early release is restricted to the final six months of sentence for those who have not previously been released on licence in relation to that sentence.

Section 2 – Release timed to benefit re-integration

13. Section 2(2) of the 2015 Act inserts new section 26C into the 1993 Act. New section 26C provides limited discretion to the Scottish Ministers to adjust a prisoner's release date from imprisonment.
14. New section 26C(1) provides that where a prisoner is to be released by the Scottish Ministers, such as under section 1(1) or section 1(2) of the 1993 Act, the Scottish Ministers may release the prisoner on a day that is earlier than the day the prisoner would otherwise be released.
15. New section 26C(2) provides that the release of a prisoner can only be brought forward if the Scottish Ministers consider that it would be better for the prisoner's reintegration into the community for the prisoner to be released on the earlier day than the day the prisoner would have been released. The 2015 Act does not define what is meant by reintegration into the community, but examples could include the prisoner obtaining access to drug or alcohol treatment services or the prisoner obtaining access to the provision of housing services.
16. It will be an operational matter for the Scottish Prison Service, on behalf of the Scottish Ministers, to consider the use of this discretion to bring forward a release date for individual prisoners.
17. New section 26C(3) provides that the date of release of the prisoner under new section 26C(1) can be brought forward by up to two days. There is no equivalent discretion to delay release by up to two days. For example, if a prisoner was due to be released under section 1(1) of the 1993 Act on a Thursday, new section 26C(1) would

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permit release up to two days before i.e. release on the Tuesday or Wednesday, but it would not permit release any later than the scheduled date of release of Thursday.

18. Existing section 27(7) of the 1993 Act provides that where a prisoner's release under the 1993 Act or the Criminal Procedure (Scotland) Act 1995 Act is scheduled to fall on a Saturday, Sunday or a public holiday, the prisoner shall be released on the last working day preceding the weekend or public holiday. For example, if a prisoner was due to be released under section 1(2) of the 1993 Act on a Saturday, section 27(7) of the 1993 Act provides that the release of the prisoner shall take place on the Friday.
19. New section 26C(4) provides that references in new section 26C referring to a day when a prisoner would be released should be read as the day they fall to be released by virtue of section 27(7) of the 1993 Act. For example, new section 26C would operate so that a prisoner initially due for release on Saturday, who would become due for release on the Friday as a result of existing section 27(7) of the 1993 Act, will be able to be released up to two days before the Friday i.e. release on the Wednesday or Thursday.
20. New section 26C(5) provides that discretion to adjust a prisoner's release date does not apply where the prisoner is serving a sentence of imprisonment of less than 15 days. This would also not apply to any young offender serving a period of detention of less than 15 days. Due to the operation of section 5(1) of the 1993 Act, the discretion will also not be available to adjust release dates for those receiving a period in custody of less than 15 days for non-payment of a fine or for contempt of court. Similarly, the discretion will not be available to adjust the release date for any young offender receiving a period of less than 15 days detention in a young offender's institution for non-payment of a fine or for contempt of court.

Section 3 – Commencement

21. Section 3(1) of the 2015 Act provides that the provisions in this section and section 4 of the Act will come into force on the day after Royal Assent. Section 3(2) provides for the rest of the Act to come into force on a day appointed by order. Section 3(4) provides that a commencement order may amend section 1(1A) of the 1993 Act so that the actual date of commencement of section 1 of the 2015 Act is specified in new section 1(1A) of the 1993 Act rather than referring there to the day when section 1 of the 2015 Act comes into force. Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows for different days to be appointed for different purposes.

PARLIAMENTARY HISTORY

22. The following table sets out, for each Stage of proceedings in the Scottish Parliament on the Bill for the 2015 Act, the dates of proceedings at that Stage took place, and the reference to the official report on those proceedings. It also shows the dates Committee reports and other papers relating to the 2015 Act were published, and references to those reports and other papers.

<i>Proceedings and Reports</i>	<i>References</i>
Bill as introduced – 14 August 2014	http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd.pdf
Stage 1	
(a) - Justice Committee	
13 January 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9715

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<i>Proceedings and Reports</i>	<i>References</i>
20 January 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9738
27 January 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9748
3 February 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9777
24 February 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9796
3 March 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9812
17 March 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9857
Stage 1 report	http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/87896.aspx
(b) – Delegated Powers and Law Reform Committee	
4 November 2014	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9603
24 February 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9795
Consideration by the Parliament	
Stage 1 debate, 2 April 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9894
Stage 2	
(a) Justice Committee	
26 May 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9969
27 May 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9976
2 June 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9988
(b) Delegated Powers and Law Reform Committee	
26 May 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9971
23 June 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10033
Consideration by the Parliament	

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<i>Proceedings and Reports</i>	<i>References</i>
Stage 3 debate, 23 June 2015	http://www.scottish.parliament.uk/parliamentarybusiness/ report.aspx?r=10035&i=92077
Bill passed	http://www.scottish.parliament.uk/parliamentarybusiness/ report.aspx?r=10035&i=92081
Royal Assent received 4 August 2015	http://www.legislation.gov.uk/asp/2015/8/contents/enacted